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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

MARC JOHN RANDAZZA,  
  
Debtor.

Case No.: BK-S-15-14956-abl  
Chapter 11

Date: May 25, 2016  
Time: 1:30 p.m.  
Courtroom 1

**REPLY TO THE LIMITED OPPOSITION OF EXCELSIOR MEDIA CORPORATION  
AND LIBERTY MEDIA HOLDINGS, LLC TO THE FIRST INTERIM APPLICATION  
OF LARSON & ZIRZOW, LLC AS GENERAL REORGANIZATION COUNSEL FOR  
THE DEBTOR FOR ALLOWANCE OF COMPENSATION FOR SERVICES  
RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED**

Marc John Randazza, as debtor and debtor in possession (the "Debtor"), by and through his counsel, the law firm of Larson & Zirzow, LLC ("L&Z"), hereby submits his reply (the "Reply") to the limited opposition (the "Opposition") [ECF No. 137] filed by Excelsior Media Corporation and Liberty Media Holdings, LLC (collectively, "Excelsior/Liberty") to the *First Interim Fee Application of Larson & Zirzow, LLC as General Reorganization Counsel for the Debtor for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred* (the "Fee Application") [ECF No. 129].<sup>1</sup>

<sup>1</sup> Unless otherwise indicated, all capitalized terms herein shall have the same meaning as set forth in the Fee Application.

1 **A. Payment from Post-Petition Earnings.**

2 1. Excelsior/Liberty apparently expresses no opposition to the allowance of all fees  
3 and costs in L&Z's Fee Application, but rather only to the payment thereof only to the extent  
4 such payment is sought from the Debtor's post-petition earnings. Specifically, the Fee  
5 Application sought the payment of less than \$8,000 of the total \$69,531.38 requested from pre-  
6 petition retainers and thereafter from exempt assets existing either on the Petition Date or  
7 generated thereafter in the form of post-petition earnings, and Excelsior/Liberty's objection is  
8 only as to the last item (*i.e.*, payment from post-petition earnings). Although L&Z does not agree  
9 with Excelsior/Liberty's position on the Debtor's ability to use his post-petition earnings to fund  
10 such litigations and/or the applicability of the exemption for such earnings, to avoid any issue in  
11 connection with the instant Fee Application, which is only an interim application in any event,  
12 L&Z withdraws without prejudice for now its request to be paid from the Debtor's post-petition  
13 earnings for any dischargeability litigations, thus mooted the issue for now of whether the such  
14 earnings are subject to exemption and/or may be used to pay for some or part of any of the  
15 nondischargeability litigations.

16 2. For the avoidance of doubt, however, and notwithstanding the foregoing, as  
17 already stated in the Fee Application, L&Z is presently seeking such compensation and  
18 reimbursement of expenses from the Debtor's pre-petition exempt property (which exemptions  
19 have been fully allowed as the time to object thereto has long ago passed), and from existing-  
20 prepetition retainers, and is reserving its right to seek payment, should it be necessary, from post-  
21 petition earnings and/or assets of the bankruptcy estate (such as potential post-petition earnings)  
22 in conjunction with final fee applications after plan confirmation in this matter. As the caselaw  
23 cited in the Fee Application indicates, that is the most appropriate time to decide such matters  
24 because it will allow the Court to take a broader look at the specific work at issue as it impacts  
25 the Debtor's entire Chapter 11 Case as a whole, including the fact that, as in the case at hand, the  
26 litigations will involve adjudications of the underlying liability itself and prosecution of the  
27 Debtor's counterclaims, which matters are compensable from the estate, and separate and apart  
28 from the nondischargeability determinations themselves.

**B. Compensation for the Excelsior/Liberty Adversary Proceeding.**

3. Second, with respect to the Excelsior/Liberty Adversary in particular, the Debtor would generally agree with the observation in the Limited Opposition that most of the litigation to date in that adversary proceeding (*i.e.*, being the motion to dismiss and/or for partial summary judgment that has been argued and taken under submission for decision by the Court) has involved issues of nondischargeability, however, that will likely change as that case progresses. Indeed, the Debtor anticipates substantial issues with respect to adjudication of the underlying claims asserted by Excelsior/Liberty (and separate and apart from whether such claims are also nondischargeable), as well as the Debtor asserting his own counterclaims, both of which work is compensable from the estate as it involves the prosecution and defense of claims themselves. Regardless, for purposes of the instant Fee Application, and without prejudice to raising such arguments in conjunction with its final fee application, L&Z is not presently seeking to be paid for any work from the Debtor's post-petition earnings (as may be property of the estate pursuant to section 1115 of the Bankruptcy Code) for any work as it relates to the Excelsior/Liberty Adversary, but rather is presently only seeking to be paid from its pre-petition retainer in that matter.<sup>2</sup>

4. Excelsior/Liberty made a similar objection in conjunction with the Debtor's retention application for L&Z, which the Court also properly denied. Specifically, in opposition to the Debtor's application to retain L&Z, which retention application included not only the retention on behalf of the debtor as general bankruptcy counsel for the chapter 11 case, but also for the anticipated nondischargeability litigation with Excelsior/Liberty, they questioned the need for the Debtor's retention of counsel for an adversary proceeding that had not yet been filed. In response, the Debtor argued that he was merely trying to economize its retention application into one filing given the expected challenges that would be coming from Excelsior/Liberty, and that it made no sense to require the filing of multiple retention applications for the various aspects of

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<sup>2</sup> To be sure, this concession is only made with respect to the instant first interim Fee Application only, and L&Z reserves any and all rights to seek payment from such sources as its relates to any subsequent interim applications (as well as the final application obviously).

1 the case when it was all but a foregone conclusion that Excelsior/Liberty would be filing such an  
2 action (which, of course, they thereafter did file). L&Z further argued that a retention application  
3 for general bankruptcy counsel will usually list any number of potential tasks that may arise in a  
4 chapter 11 case, and such retentions are regularly approved even if the professional does not  
5 actually end up having to perform all the tasks for which approval was sought. Further, L&Z  
6 argued that there is no requirement under the Bankruptcy Code and/or the Bankruptcy Rules that  
7 an estate or a debtor must necessarily wait until after an event happens and the need for counsel  
8 definitively arises (*i.e.*, like the filing of a nondischargeability complaint) before getting a  
9 professional's retention approved and at the ready. Lastly, L&Z argued that approval of its  
10 representations in potential nondischargeability litigation was needed regardless of whether  
11 compensation from the estate would be sought as a matter of disclosure. In other words, L&Z  
12 argued that it did not have the luxury of simply not filing a retention application to be retained for  
13 such potential litigations, but rather was required to do so.

14 **C. Compensation for the Cox Adversary Proceeding.**

15 5. Third, with respect to the compensation for time spent on the Cox Adversary, as  
16 the *Complaint* and the *Motion for Summary Judgment* to be filed in those matters indicate, which  
17 will be on file prior to the hearing on this Fee Application, all but two (2) hours of time was  
18 spent addressing adjudication of the underlying claim of \$10,000,000 as asserted by Ms. Cox,  
19 which work is clearly compensable from the estate as it involves a claim objection. Indeed, as  
20 the motion for summary judgment indicates, the very limited arguments with respect to the  
21 dischargeability of Ms. Cox alleged claim are secondary and made in the alternative, and in fact  
22 only come into play if the claim objection itself is somehow denied. In fact, only approximately  
23 two (2) pages of the forty-five (45) page summary judgment motion addresses the alleged  
24 nondischargeable aspects of Ms. Cox's claims, and on a limited basis, whereas the rest of the  
25 pleading is a claim objection addresses the underlying allowance of the asserted claim itself,  
26 which work is compensable from the estate. As such, it is appropriate to allow L&Z  
27 compensation for all work done on the Cox Adversary, and for such work to be paid from pre-  
28 petition retainers until they are exhausted (or from pre-petition exempt property), and with the

1 payment of any unsatisfied balance and whether it can be paid from the Debtor's post-petition  
 2 earnings or other assets of the estate to be deferred and heard in conjunction with a final fee  
 3 application.

4 **D. Clarification of Itemized Documentation for Costs.**

5 6. In preparing this Reply, the Debtor realized that although the first page of Exhibit  
 6 3 to its Fee Application and the Fee Application itself contained a correct amount of costs  
 7 incurred, the detailed backup attached to that same exhibit did not add up to the total amounts  
 8 reflected on that first page summary. These two items did not "foot" with each other because the  
 9 summary chart on the first page included costs for the entire Compensation Period through April  
 10 15, 2016, whereas the backup itemized lists attached thereto only were run through the end of  
 11 March 2016 (*i.e.*, thus missing the last two weeks of the Compensation Period). As such, to  
 12 complete the record and make sure it is correct, the first page of Exhibit 3 and the total costs  
 13 requested in the Fee Application of \$3,733.88 are all correct, and it is only the itemized backup  
 14 that needed to be supplemented, which revised supplement run through April 15, 2016 is  
 15 attached hereto as **Exhibit 1.**

16 **Conclusion**

17 WHEREFORE, the Debtor respectfully requests that the Court grant the Fee Application,  
 18 thereby allowing all fees and costs therein, and further allowing L&Z to be paid for all fees and  
 19 costs allowed herein from either any pre-petition retainers or exempt assets that existed as of the  
 20 Petition Date; *provided, however*, that L&Z shall not be compensated for any fees and costs  
 21 allowed herein from any of the Debtor's post-petition earnings; and *provided, further*, that the  
 22 issue of whether any unpaid fees and costs as allowed herein may be paid from any of the  
 23 Debtor's post-petition earnings shall be deferred and fully reserved without prejudice to the time  
 24 of any final fee application in this Chapter 11 Case.

25 ...

26 ...

27 ...

28

1 The Debtor also requests such other relief as is just and proper.

2 Dated: May 18, 2016.

3 LARSON & ZIRZOW, LLC

4  
5 By: 

ZACHARIAH LARSON, ESQ.

Nevada Bar No. 7787

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EXHIBIT “1”

EXHIBIT “1”



Johnson & Johnson  
Disbursement History  
To Apr/12/2016

Matter #	Client Name	Description	Date	Ref#	Explanation	Resp	Law Type	Amount	Billed
3281-005	Randazza, Marc	Crystal Cox Adversary				MCZ	bank		
			3/29/2016	X0540	phx Photocopy Expense			122.25	N
			4/4/2016	X0543	phx Photocopy Expense			65.50	N
					<b>Total Photocopy Expense</b>			<b>187.75</b>	
					<b>Total</b>			<b>187.75</b>	
3281-003	Randazza, Marc	Liberty & Excelesior Adversary				MCZ	bank		
			12/1/2015	X0506	crx Courier Expense			10.00	N
					<b>Total Courier Expense</b>			<b>10.00</b>	
			11/30/2015	X0504	phx Photocopy Expense			12.25	N
			1/22/2016	X0519	phx Photocopy Expense			178.25	N
			2/10/2016	X0526	phx Photocopy Expense			5.25	N
			3/16/2016	X0535	phx Photocopy Expense			65.00	N
			3/15/2016	X0536	phx Photocopy Expense			17.50	N
					<b>Total Photocopy Expense</b>			<b>278.25</b>	
			3/15/2016	X0536	psx Postage Expense			2.08	N
					<b>Total Postage Expense</b>			<b>2.08</b>	
			11/30/2015	2006	Tran Transcripts - CD - BK-S-15-01108-abl			30.00	N
					<b>Total Transcripts</b>			<b>30.00</b>	
			1/1/2016	X0514	Pacx Pacer / DAP Expense			0.40	N
			2/1/2016	X0523	Pacx Pacer / DAP Expense			6.70	N
			3/1/2016	X0531	Pacx Pacer / DAP Expense			0.80	N
			4/1/2016	X0542	Pacx Pacer / DAP Expense			6.30	N
					<b>Total Pacer / DAP Expense</b>			<b>14.20</b>	
			3/14/2016	X0535	scx Scan Expense			7.50	N
			3/15/2016	X0535	scx Scan Expense			137.50	N
			3/15/2016	X0535	scx Scan Expense			56.25	N
					<b>Total Scan Expense</b>			<b>201.25</b>	
					<b>Total</b>			<b>535.78</b>	
3281-004	Randazza, Marc	Post-Petition Chapter 11 Bankruptcy				MCZ	bank		
			9/9/2015	1862	crx Courier Expense			24.00	N
			9/9/2015	1862	crx Courier Expense			47.00	N
			10/1/2015	X0484	crx Courier Expense			10.00	N
			10/1/2015	X0484	crx Courier Expense			10.00	N
			10/29/2015	1898	crx Courier Expense			25.00	N
			11/1/2015	X0492	crx Courier Expense			10.00	N
			12/1/2015	X0506	crx Courier Expense			10.00	N
			12/1/2015	X0506	crx Courier Expense			10.00	N
					<b>Total Courier Expense</b>			<b>146.00</b>	
			11/2/2015	X0491	lex Lexis/Westlaw			9.75	N
			12/1/2015	X0505	lex Lexis/Westlaw			48.12	N
			2/1/2016	X0527	lex Lexis/Westlaw			130.00	N
			4/1/2016	X0541	lex Lexis/Westlaw			978.69	N
					<b>Total Lexis/Westlaw</b>			<b>1166.56</b>	
			9/10/2015	X0476	phx Photocopy Expense			11.25	N
			9/11/2015	X0476	phx Photocopy Expense			7.00	N
			9/22/2015	X0479	phx Photocopy Expense			693.25	N
			10/1/2015	X0485	phx Photocopy Expense			183.50	N
			10/2/2015	X0485	phx Photocopy Expense			0.25	N
			10/29/2015	X0490	phx Photocopy Expense			19.50	N
			10/30/2015	X0490	phx Photocopy Expense			41.25	N
			10/8/2015	X0487	phx Photocopy Expense			27.25	N
			10/15/2015	X0488	phx Photocopy Expense			23.50	N
			11/4/2015	X0493	phx Photocopy Expense			25.50	N
			11/6/2015	X0494	phx Photocopy Expense			54.00	N
			11/9/2015	X0494	phx Photocopy Expense			4.75	N
			11/12/2015	X0495	phx Photocopy Expense			59.50	N
			1/17/2015	X0500	phx Photocopy Expense			33.00	N
			12/16/2015	X0509	phx Photocopy Expense			13.25	N
			1/20/2016	X0517	phx Photocopy Expense			4.25	N
			3/30/2016	X0540	phx Photocopy Expense			10.25	N
					<b>Total Photocopy Expense</b>			<b>1211.25</b>	
			9/10/2015	X0476	psx Postage Expense			23.52	N
			9/11/2015	X0476	psx Postage Expense			3.43	N
			9/22/2015	X0479	psx Postage Expense			74.64	N
			10/2/2015	X0485	psx Postage Expense			0.49	N
			10/30/2015	X0490	psx Postage Expense			28.91	N
			11/6/2015	X0494	psx Postage Expense			26.46	N
			11/12/2015	X0495	psx Postage Expense			3.18	N
			12/16/2015	X0509	psx Postage Expense			30.21	N
					<b>Total Postage Expense</b>			<b>190.84</b>	
			9/18/2015	1866	ffee Filing Fee - USBC *9/10			30.00	N
			11/20/2015	1920	ffee Filing Fee - USBC *10/23			30.00	N
			12/18/2015	1928	ffee Filing Fee - USBC *12/02			30.00	N
					<b>Total Filing Fee</b>			<b>90.00</b>	
			9/1/2015	X0471	Pacx Pacer / DAP Expense			51.70	N
			10/1/2015	X0483	Pacx Pacer / DAP Expense			5.20	N
			10/1/2015	X0483	Pacx Pacer / DAP Expense			1.30	N
			10/22/2015	1893	Pacx Pacer / DAP Expense Clarkefileid *10/02			12.00	N
			10/22/2015	1893	Pacx Pacer / DAP Expense Clarkefileid *10/02			12.00	N



Disbursement History  
To Apr/12/2016

Matter #	Client Name	Description	Ref#	Explanation	Resp	Law Type	Amount	Billed
		Date						
		11/1/2015	X0492	Pacx Pacer / DAP Expense			24.80	N
		11/1/2015	X0492	Pacx Pacer / DAP Expense			13.20	N
		11/20/2015	1920	Pacx Pacer / DAP Expense *11/10			12.00	N
		2/1/2016	X0523	Pacx Pacer / DAP Expense			1.30	N
		3/1/2016	X0531	Pacx Pacer / DAP Expense			1.00	N
		4/1/2016	X0542	Pacx Pacer / DAP Expense			20.80	N
		3/1/2016	X0531	Pacx Pacer / DAP Expense			0.40	N
				<b>Total Pacer / DAP Expense</b>			<b>155.70</b>	
		3/24/2016	X0539	scx Scan Expense			13.75	N
		3/24/2016	X0539	scx Scan Expense			36.25	N
				<b>Total Scan Expense</b>			<b>50.00</b>	
				<b>Total</b>			<b>3010.35</b>	
				<b>Firm Total</b>			<b>3733.88</b>	

## REPORT SELECTIONS - Disbursement Analysis and Interest

Layout Template:	Default	Matters Sort by:	Default
Requested by:	CS	New Page for Each Lawyer:	No
Finished:	Tuesday, April 19, 2016 at 12:23:45 PM	Calculate Interest:	No
Selection:	Disbursement History	Calc Interest To:	4/19/2016
Matters:	3281-005 3281-006 3281-003 3281-004	Include Paid:	Paid and unpaid
Clients:	All	Interest Rate:	0.00
Major Clients:	All	Show Firm Totals:	No
Responsible Lawyer:	All	Show Totals Only:	No
Client Intro Lawyer:	All	Summarize by Type of Law:	No
Assigned Lawyer:	All		
Include Billed:	Billed and unbilled		
Type of Law:	All		
Matter Intro Lawyer:	All		
Select From:	Active, Inactive Matters		
Billed up to:	All		
Summarize by Resp. Lawyer:	No	Receipt up to:	4/19/2016
Summary by Explanation Codes:	No		
Ver:	14.0 (14.0.20140812)		